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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
 Southwestern Bell Telephone Company, Pacific )  
 Bell, and Nevada Bell Petition for Relief from )  
 Regulation Pursuant to Section 706 of the )  
 Telecommunications Act of 1996 and )  
 47 U.S.C. Section 160 for ADSL Infrastructure )  
 and Service )  
 )

CC Docket No. 98-91

**OPPOSITION OF WORLDCOM, INC.**

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June 24, 1998

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## SUMMARY

WorldCom strongly opposes SBC's petition. SBC has provided no rational basis for arguing that Section 706 of the 1996 Act allows the RBOCs to provide DSL services outside the dictates of the unbundling and resale provisions of Section 251(c), dominant carrier regulatory treatment, and the most favored nation requirement of Section 252(i).

The pro-competitive provisions of the 1996 Act apply to the RBOCs' deployment of ADSL and other advanced telecommunications and data facilities, capabilities, and services. Section 251 does not distinguish between "basic" and "advanced" services, or between local exchange facilities used to provide voice services and those same facilities used to provide data services. Nor does the legislative history hint at any such disparate treatment. The FCC already found in the Local Competition Order that Section 251 includes DSL capability. Moreover, the very essence of Section 251(c) demands that the FCC encourage the deployment of advanced services by relying on open competition between multiple providers, not the deregulated extension of the incumbents' closed monopolies. In order for the words and promise of the Act to be fully realized in the competitive provision of advanced data services, CLECs must be able to obtain the full measure of interconnection, collocation, network elements, and resale.

The three statutory pathways contained in Section 251(c) allow a CLEC to access and utilize: (1) a DSL-capable loop (a conditioned ILEC loop and collocated CLEC electronics); (2) a DSL-equipped loop (a conditioned ILEC loop and ILEC electronics); and/or (3) DSL service (the ILEC's retail DSL service on a resale basis). The Act does not allow the FCC to foreclose any of these three competitive entry options in any Section 706 proceeding.

In exchange for the complete elimination of two of the three statutory pathways (DSL-equipped loops and resold DSL services), SBC promises that it will (sometimes) provide

competitors with (some type of) DSL-capable loops (at some price), and (some form of) collocation. Aside from the fact that this proposed regulatory compact directly and unequivocally violates the Act, it cannot be sanctioned on policy and factual grounds as well. SBC offers no salient details to support its open-ended claim that CLECs seeking DSL-capable loops from SBC will receive non-discriminatory treatment. To the extent, for example, that SBC will be able to use Digital Loop Carrier-based local loops to serve one-third of the country, but competitors would be denied that same opportunity, that in itself is a singular case of blatant discrimination. More fundamentally, SBC's attempt to deny CLECs the ability to utilize DSL-equipped loops, and resold DSL services, is inherently discriminatory under the Act. SBC's ambiguous promises about collocation are similarly lacking in merit.

Even assuming for the moment that the Commission has the authority to override the 1996 Act and forbear from enforcing Section 251(c) -- which it cannot -- SBC's rationale for taking such drastic action rests on vague assertions about its own investment incentives, and vaguer promises about its future deployment plans. Contrary to SBC's own views, the 1996 Act created the perfect incentive system: once the RBOCs have opened up their local markets, they will be free to enter the long distance market. As long as the RBOCs are required to carry out every critical component of their statutory obligations, this quid pro quo system should properly incent the RBOCs to allow local competition of all kinds to flourish. To the extent, however, that the RBOCs are excused from their obligations, this incentive system breaks down, and local competition is jeopardized. SBC's complaints about its lack of incentives to deploy ADSL, while logically and factually suspect, also run directly counter to the pro-competitive incentives that form much of the structure of the 1996 Act.

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**OPPOSITION OF WORLDCom, INC.**

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files initial comments in opposition to the petition for "relief" ("Petition") filed by Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell ("SBC") on June 9, 1998 in the above-captioned proceeding.<sup>1</sup> WorldCom urges the Commission to reject the blatantly one-sided and unlawful demands contained in SBC's Section 706 petition.

**I. INTRODUCTION AND BACKGROUND**

WorldCom, Inc. is a leading global telecommunications company. Through its wholly-owned subsidiaries, WorldCom provides its business and residential customers with a full range of facilities-based, fully integrated local, long distance, and international telecommunications and information services. In particular, WorldCom currently is the nation's fourth largest facilities-based interexchange carrier ("IXC"), as well as a significant facilities-based competitive local exchange carrier ("CLEC") and Internet service provider ("ISP").

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<sup>1</sup> The Common Carrier Bureau issued a Public Notice establishing a pleading cycle. Public Notice, DA 98-1111, released June 11, 1998.

Once again, a Regional Bell Operating Company ("RBOC") has attempted to wrap itself in the mantle of Section 706 of the Telecommunications Act of 1996 ("1996 Act") as a pretext for dismantling most of the pro-competitive provisions of the Act. This time around, SBC seeks "relief from various obligations and burdens" from the 1996 Act that apply to SBC's deployment and provision of Asynchronous Digital Subscriber Line ("ADSL") capabilities and service.<sup>2</sup> In particular, SBC argues that Section 706 should be interpreted as allowing the outright elimination of the applicability to ADSL of the unbundling and resale provisions of Section 251(c), dominant carrier regulatory treatment, and the most favored nation ("MFN") requirement of Section 252(i).

As was the case with the other fundamentally flawed RBOC petitions filed under the good name of Section 706, WorldCom strongly opposes the SBC Petition. Many of the arguments WorldCom raised against the other RBOC petitions apply with equal force to the SBC Petition, and WorldCom incorporates those arguments by reference.<sup>3</sup> In addition, WorldCom recently filed comments supporting a Section 706 petition filed by the Association of Local Telecommunications Services ("ALTS"),<sup>4</sup> which asks the Commission to reiterate that critical components of the 1996 Act, including requiring incumbent local exchange carriers ("ILECs") to provide interconnection, collocation, unbundled network elements ("UNEs"), and retail

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<sup>2</sup> SBC Petition at 1.

<sup>3</sup> Consolidated Opposition of WorldCom, Inc., CC Docket Nos. 98-11, 98-26, 98-32, filed April 6, 1998; Consolidated Reply Comments of WorldCom, CC Docket Nos. 98-11, 98-26, 98-32, filed May 6, 1998; Comments of WorldCom, Inc., CCB/CPD 98-15, filed April 13, 1998; Reply Comments of WorldCom, Inc., CCB/CPD 98-15, filed May 4, 1998.

<sup>4</sup> Comments of WorldCom, Inc., CC Docket No. 98-78, filed June 18, 1998 ("WorldCom ALTS Section 706 Comments").

services for resale, apply fully to digital and broadband services, facilities, and technologies.<sup>5</sup> Because WorldCom's comments on the ALTS petition focused on application of the 1996 Act to xDSL capabilities and services, a copy of those comments is included herein as Attachment A. For purposes of the instant comments, WorldCom will touch briefly on a few key points concerning the SBC Petition.

## **II. THE SBC PETITION IS UNSUPPORTED, UNLAWFUL, AND CONTRARY TO THE PUBLIC INTEREST**

### **A. The 1996 Act Requires ILECs To Provide CLECs With DSL-Capable Loops, DSL-Equipped Loops, And/Or DSL Services**

#### **1. Section 251(c) Provides Three Unassailable Local Entry Pathways**

Even though SBC's Petition is premised on the fact that the pro-competitive provisions of the 1996 Act -- Sections 251, 252, and 271 -- apply to the RBOCs' deployment of advanced telecommunications and data facilities, networks, and services (such as ADSL), SBC somehow cannot bring itself to acknowledge that fact. Instead, SBC raises the possibility (in two brief footnotes) that these provisions may not govern the RBOCs' ADSL capabilities and services at all.<sup>6</sup> SBC then proceeds to present its arguments only after "[a]ssuming that ADSL is subject to unbundling and wholesale discounts under Section 251(c) and applicable Commission rules."<sup>7</sup> This will not do. If Section 251(c) does not apply to xDSL, SBC's

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<sup>5</sup> Petition of the Association for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-78, filed May 27, 1998 ("ALTS Petition").

<sup>6</sup> SBC Petition at 26 n.25, n.26.

<sup>7</sup> SBC Petition at 26.

Petition would be a far greater waste of time than it already is. SBC must either admit up front that these provisions apply, or withdraw its Petition immediately so the Commission and interested parties can devote their limited resources to more worthwhile endeavors.

Whatever SBC's views on the subject, WorldCom believes it is crystal-clear that Sections 251, 252, and 271 of the 1996 Act do apply to DSL services and capabilities. First, as a textual matter, Section 251 does not distinguish between "basic" and "advanced" telecommunications and data services, or between local exchange facilities used to provide voice services and those used to provide data services, or a mix of voice and data services. Second, the legislative history does not support any disparate treatment of these categories of local services. Third, the very essence of Section 251(c) demands no less. As a means of encouraging the accelerated deployment of advanced services, the Commission should rely on open and unbridled competition between multiple providers, not the further, deregulated extension of the incumbents' closed monopolies. In short, in order for the promise of Section 251 to be fully realized, CLECs must be able to obtain the full measure of interconnection, collocation, UNEs, and resale if they are to realize their full potential as competitors in advanced data services.

Contrary, then, to SBC's fumbled attempts to deny the obvious, the 1996 Act gives CLECs multiple pathways for providing competitive local telecommunications services to their end user customers in the local market. As described in WorldCom's comments supporting the ALTS petition, a competing carrier can, at its own option, (1) construct and interconnect new local facilities with the ILEC's facilities (Sections 251(c)(2), 251(c)(3), and 251(c)(6)); (2) lease network elements at cost-based rates to provide any competing service (Section 251(c)(3));



and/or (3) resell any ILEC retail service at wholesale rates (Section 251(c)(4)).<sup>8</sup> In the context of DSL service, these three statutory pathways translate into a ILEC's provision of:

- (1) DSL-capable loop -- a conditioned ILEC loop (as a cost-based UNE), combined with the CLEC's own collocated DSL electronics;
- (2) DSL-equipped loop -- a conditioned ILEC loop, the ILEC's DSL electronics, and (at the CLEC's option) the ILEC's local switching and transport (as separate cost-based UNEs), with collocation at the CLEC's option; or
- (3) DSL service -- the ILEC's retail DSL service on a resale basis (at a wholesale rate), with no collocation required.

All three competitive entry options are expressly available to CLECs under the 1996 Act, and cannot be foreclosed by the Commission in any Section 706 proceedings. The Act itself indicates that the very heart of the "obligations and burdens" that SBC seeks to strike down cannot be eliminated by Commission forbearance action. Among the "regulating measures" listed in Section 706(a) is "regulatory forbearance," which is governed by Section 10 of the Act.<sup>9</sup> However, Section 10(d) plainly states that the Commission "may not forbear from applying the requirements of section 251(c) or 271 under subsection (a)."<sup>10</sup> Thus, forbearance cannot reach the local competition and interLATA entry provisions of the Act. Further, the Commission recently held that "prior to their full implementation we lack authority to forbear from application of the requirements of section 272 to any service for which the BOC must

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<sup>8</sup> WorldCom ALTS Section 706 Comments at 10.

<sup>9</sup> 47 U.S.C. Section 160.

<sup>10</sup> 47 U.S.C. Section 160(d).

obtain prior authorization under section 271(d)(3)."<sup>11</sup>

Nor is Section 706 an "independent grant of authority," as SBC claims;<sup>12</sup> rather, the Commission's forbearance authority does not exist except as set forth in Section 10. The RBOCs apparently believe that the phrase "under subsection (a) of this section" somehow limits the applicability of subsection (d) only to Section 10, and does not include Section 706, but this is plainly a game of semantics. The phrase in question is merely a convenient and common device used in statutes to refer back to a main provision. The RBOCs' strained reading of a mere reference phrase into independent substantive significance does not stand up to rational scrutiny.

As WorldCom pointed out in its ALTS comments,<sup>13</sup> should the Commission somehow buy into the RBOCs' skewed interpretation of the 1996 Act, a determination that Section 706 is an independent grant of authority, unfettered by any other provision of the 1996 Act or the 1934 Act, means that all of 706 -- not just the forbearance provision -- would be free of other statutory restrictions. As a result, if the Section 706 forbearance authority is independent of Section 10, as the RBOCs assert, then the Section 706 direction that the Commission and state commissions utilize "measures to promote competition in the local telecommunications market"<sup>14</sup> similarly is independent of Section 251, Section 252, and any

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<sup>11</sup> Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order (Common Carrier Bureau, February 6, 1998) at para. 22.

<sup>12</sup> SBC Petition at 4, 23-24.

<sup>13</sup> WorldCom ALTS Section 706 Comments at 3-4.

<sup>14</sup> 47 U.S.C. Section 157 nt (Section 706(a)).

other provision of the Act. Faced with the possibility of Commission mandates to undertake a whole host of measures aimed at encouraging local competition -- whether or not authorized or permitted by other provisions of the 1996 Act -- the RBOCs might choose instead to withdraw their Section 706 petitions.

SBC also argues that the public interest test in Section 706 gives the Commission broad, independent discretion to grant its Petition.<sup>15</sup> Of course, if true, this conclusion cuts against the RBOCs' pecuniary interests. As would be the case if Section 706 is an independent grant of authority, the public interest standard of Section 706 would be entirely divorced from other limitations on Commission and state authority contained elsewhere in the Act. Again, the RBOCs cannot have it both ways.

## **2. SBC Cannot Unilaterally Proffer Less Than What The Act Requires**

In exchange for eliminating two of the three statutory pathways to provide advanced telecommunications and data services on a competitive basis, SBC promises its competitors that it will abide by the requirements of the single remaining pathway, the DSL-capable loop. SBC essentially claims it will (sometimes) provide (some type of) DSL-capable loops (at some price), and (some form of) collocation.<sup>16</sup> Neither promise is worth the paper it is printed on.

First, SBC's limited offering of DSL-capable loops is far less than it appears. The 1996 Act, and the Commission's implementing rules, already require SBC to provide DSL-

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<sup>15</sup> SBC Petition at 23-24.

<sup>16</sup> SBC Petition at 17-21.

capable loops.<sup>17</sup> Even in the face of this mandate, SBC nonetheless expressly states that its "offer" does not include provisioning loops using any pair gain system, such as Digital Loop Carrier ("DLC"),<sup>18</sup> which account for up to 30 percent of all local loops in the United States. Right from the start, then, SBC would unilaterally forbid CLECs for competing for almost one-third of all potential customers. In contrast, SBC alone would be able to employ the necessary DSL electronics at its remote terminals. So much for nondiscrimination, and competition.

Further, for over two years, the RBOCs have prevented WorldCom and other CLECs from gaining access to DSL-capable loops on an equal footing.<sup>19</sup> In each of its interconnection agreements with the RBOCs, WorldCom has been successful in negotiating the right to utilize DSL capability to provide service ubiquitously to its end user customers. Securing a right in a piece of paper, however, is far different from actually being able to exercise it in the marketplace. Moreover, there is ample evidence that the RBOCs are seeking to charge excessive non-recurring and recurring charges for the right to utilize a DSL-capable loop.<sup>20</sup> If the RBOCs have been able to get away thus far with flaunting the requirements of the 1996 Act and numerous interconnection agreements, the Commission has no reasonable assurance that they will not continue their game of intransigence and delay.

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<sup>17</sup> See WorldCom ALTS Section 706 Comments at 11-12.

<sup>18</sup> SBC Petition at 18.

<sup>19</sup> Several commenters in the RBOC Section 706 proceedings presented an excellent snapshot of this anticompetitive ILEC behavior. See Comments of Covad Communications Company, CC Docket Nos. 98-11, 98-26, 98-32, filed April 6, 1998, at 8-12 ("Covad Comments"); Comments of the DSL Access Telecommunications Alliance, CC Docket Nos. 98-11, 98-26, 98-32, filed April 6, 1998, at 11-14 ("DATA Comments").

<sup>20</sup> See WorldCom ALTS Section 706 Comments at 12.

SBC offers absolutely no details to support its claim that CLECs seeking DSL-capable loops will get non-discriminatory treatment. While alluding to some future usage of an "ordering process"<sup>21</sup> -- assumedly comprised of one or more operational support systems ("OSS") -- SBC fails to mention that no OSS devised by any RBOC to date has passed muster with the Commission. Further, to the extent SBC can use its DLC-based loops, but competitors cannot, that is a singular example of discrimination. More importantly, SBC's attempt to deny CLECs the ability to utilize DSL-equipped loops, and resold DSL service, is inherently discriminatory under the Act.

SBC's ambiguous collocation promises are equally worthless. As ALTS, Covad, WorldCom, and others have pointed out, the ILECs have made an endless battle out of preventing CLECs from collocating on a reasonable, timely, and cost-based basis.<sup>22</sup> Further, SBC's statement that it will not support DSL over DLC apparently means that it will not offer collocation space to CLECs for remote DSL equipment, such as RDSLAMs.

Finally, the Petition notes that, "because the Internet traffic is predominantly interstate in nature," SBC will be filing federal, interstate tariffs for its ADSL service.<sup>23</sup> In fact, SBC already has filed its self-described "federal DSL access" tariff. WorldCom shares ALTS' view that this tariff is unlawful and must be rejected.<sup>24</sup> In particular, SBC's tariff filing

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<sup>21</sup> SBC Petition at 20.

<sup>22</sup> See WorldCom ALTS Section 706 Comments at 13-14.

<sup>23</sup> SBC Petition at 22.

<sup>24</sup> Petition to Reject, Or to Suspend and Investigate, By the Association for Local Telecommunications Services, Pacific Bell Access Service Tariff FCC No. 128, Transmittal No. 1986, filed June 22, 1998 ("ALTS Petition to Reject SBC Tariff").

ignores the ample, unrefuted evidence -- recently confirmed by a U.S. District Court -- that, while the Internet itself is an interstate service, telephone calls to ISPs in order to access the Internet are local calls, and jurisdictionally intrastate in nature.<sup>25</sup> In the case of ADSL, the service provides the consumer with local access to the global data network, as well as local access to the ILEC or CLEC's own voice network. As ALTS points out, SBC's tariff filing is merely another escalation of the RBOCs' endless battles over their obligation to pay CLECs reciprocal compensation for local calls terminating to ISPs,<sup>26</sup> as well as an attempt to avoid state policies and impose interstate access charges on ISPs.<sup>27</sup> SBC and its ILEC brethren try to confuse the issue by focusing on the identity of the entity that receives the call, rather than the local nature of the call itself. Each one of the nineteen state public service commissions that has addressed the reciprocal compensation issue to date has rejected the ILECs' claims. So should the Commission. SBC's pending tariff filing for DSL access service must be rejected.

**B. There Is No Valid Reason To Deregulate The RBOCs' ADSL Offerings**

Even assuming for the moment that Section 251(c) can be forborne -- which it cannot -- SBC offers nothing but vague assertions about its own investment incentives, and vaguer promises about its future deployment plans. The Commission should not buy into SBC's rosy vision of an RBOC-dominated data services world.

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<sup>25</sup> Southwestern Bell Telephone Co. v. Public Utility Commission of Texas et al, MO-98-CA-43 (U.S.D.C. W.D. Texas), issued June 16, 1998.

<sup>26</sup> ALTS Petition to Reject SBC Tariff at 10-13.

<sup>27</sup> Indeed, by filing a federal tariff for a service of local or (at best) mixed jurisdiction, SBC seems to be seeking the FCC's official imprimatur on preemption of the states' proper role in regulating local telephone services.

SBC's primary argument is another variation of the RBOCs' now-familiar "we now need lots of new incentives to deploy services we should have deployed years ago" refrain. In this case, SBC insists that the application of the 1996 Act to ADSL acts as a "total or partial barrier or disincentive to investing in advanced telecommunications capability."<sup>28</sup> There are any number of possible rejoinders to this assertion.

First, the 1996 Act (at least in theory) created the perfect incentive system: the RBOCs must open up their local markets, and then they will be permitted to enter the long distance market, including interLATA data markets. As long as the RBOCs are required to carry out their statutory obligations, this quid pro quo system should incent the RBOCs to allow competition to flourish. Of course, to the extent the RBOCs are excused from their obligations, the incentive system breaks down, and local competition is jeopardized. SBC's complaints about its lack of incentives to deploy ADSL runs directly counter to the pro-competitive incentives contained in the statute.

Second, the 1996 Act nowhere creates an exception from its own incentive-based system that would allow the RBOCs to dodge their duties under Section 251. If Congress had intended such a major exception, the Act would reflect such an intention.

Third, the facts give the lie to SBC's contentions. Not a week goes by that another ILEC does not announce new or expanded plans to provide ADSL services. WorldCom welcomes these plans as further evidence of the promise and viability of DSL. Of course, the point is that the ILECs already are busily deploying ADSL services across the country, even under the current regulatory regime. Current deployment incentives obviously are more than

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<sup>28</sup> SBC Petition at 3.

sufficient. SBC fails to pinpoint how the ILECs' ambitious deployments plans are being adversely affected by the 1996 Act.

SBC's own Petition contains yet another reason why the "lack of incentives" argument is fundamentally wrong. Pointing out that some cable companies are beginning to deploy cable modems, SBC argues that the high-speed data access market is so competitive that the RBOCs should be allowed to compete unhampered by statutory obligations.<sup>29</sup> However, the point is not whether other cable-based competitors are in the market. CLECs have unassailable rights under the 1996 Act to utilize ILEC network elements as a telephony-based platform for providing DSL, or any other local telecommunications service. SBC has no business telling CLECs that they can only compete by abandoning their sunken and future telephony facilities investment and switching to an entirely different technology (one controlled, after all, by the monopoly cable companies). More importantly, the presence of cable modems directly undercuts SBC's "lack of incentives" argument; if this competition is truly significant, the RBOCs will fear it enough that they will deploy ADSL as fast as possible, with or without the radical deregulation they propose. As it turns out, that is precisely what is happening.

SBC claims that there is no need for the Commission to retain alternative local market entry pathways because there are other CLECs competing in the DSL market, such as UUNET and Covad.<sup>30</sup> What SBC does not acknowledge, however, is the simple fact that these competitors, operating on a limited geographic basis to a few niche markets, remain dependent on the ILECs' bottleneck local loops in order to provide ADSL services to their customers.

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<sup>29</sup> SBC Petition at 11-14.

<sup>30</sup> SBC Petition at 15-17.



CLECs can compete with the ILECs to provide DSL and other services, only insofar as the ILECs will allow such competition by carrying out their Section 251(c) obligations. SBC wants to point to niche market CLEC competition as justification for granting its Petition, yet deny CLECs an opportunity to compete on a widescale basis.

In addition, SBC's claim that ADSL somehow is a "proprietary element" cannot be given credence.<sup>31</sup> The fact that no final DSL standard has yet been selected by the equipment vendor community is no reason to classify any technology the ILECs select as "proprietary." Further, contrary to SBC's implication, the ILECs did not create ADSL, or test ADSL, or deploy ADSL -- the CLECs, with the assistance of forward-thinking vendors, did. In fact, WorldCom's MFS subsidiary was one of the first CLECs to announce plans to provide DSL services across the country.<sup>32</sup> MFS was the first company to develop a workable IDSL service to replace circuit-switched ISDN service, the first to actually deploy the service, and the first to present it to the Commission as part of a live demonstration in 1996. Despite this history of competitive success, the ILECs now are trying to convince policymakers that ADSL is a proprietary, ILEC-only capability that belongs solely to the incumbents, one they therefore should not be required to share.<sup>33</sup> This is nonsense. The CLECs don't want anything from the ILECs but the ability to compete on a equal footing.

SBC also claims that the CLECs require their own set of incentives to get into the

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<sup>31</sup> SBC Petition at 26.

<sup>32</sup> See Press Release, "MFS and UUNET Announce Plan to Rollout New xDSL Services That Redefines Internet Access for Growing Businesses," December 9, 1996; see also "Uunet to Launch High-Speed DSL Services," Web Week, January 6, 1997 (with regard to xDSL, the RBOCs are "still trying to play catch-up" to MFS and other CLECs).

<sup>33</sup> SBC Petition at 27.

data market, which are -- surprise -- the very same incentives the RBOCs want, namely, the FCC-sanctioned denial of nondiscriminatory access to services and capabilities promised by the 1996 Act. Unlike the ILECs, however, the CLECs have never needed artificial "incentives" to invest in ADSL technology. While the ILECs have sat on their collective hands for over two years, busily fighting the 1996 Act and its implementation, CLECs have struggled to raise capital, lay fiber, test new technologies and services, and gone to market one customer at a time. Now the ILECs want to move in to extend their voice bottleneck control to data technologies and services. It is not the CLECs who are the interlopers here, but the ILECs.

SBC's call for nondominant treatment of its provision of ADSL, which it claims would eliminate tariff filing requirements, pricing and costing limitations, and other aspects of Parts 61 through 69 of the Commission's rules,<sup>34</sup> is equally flawed. SBC completely overlooks the fact that, as explained above, ADSL service is solely dependent on telephony delivery via the ILECs' local loops. In determining whether the RBOCs are able to exercise market power, the Commission's inquiry necessarily focuses on the ILECs' dominant control over the local loop. As long as the ILECs exercise bottleneck control over the local loop, no basic service provided over that loop can be subject to nondominant regulation.

Finally, as if sensing that the substance of its proposal lacks merit on its own, SBC commits, in a vague and unspecified way, to providing (in the future) advanced data services to schools and libraries, and "unserved" and "underserved" customers in inner city and rural areas.<sup>35</sup> Of course, SBC can make this kind of pitch, not out of the goodness of its

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<sup>34</sup> SBC Petition at 28-32.

<sup>35</sup> SBC Petition at 34-35.

corporate heart, but because it knows that, as long as it controls the last mile to these customers, no other competitors will be able to serve them. Nonetheless, in a moment of candor, SBC admits in a separate section of its Petition that its business plans do not include offering ADSL services ubiquitously to all, but instead "will be targeted at end-users that access the Internet and work-at-home applications that access corporate LANs."<sup>36</sup> Not exactly a profile of the typical low-income resident of the nation's inner cities or rural regions. Furthermore, as an SBC spokesman admitted recently, limitations inherent in current ADSL technology mean that more than one-third of Pacific Bell's local loops, including many in rural areas, fail to qualify for ADSL in the first place.<sup>37</sup> In WorldCom's estimation, what SBC's "underserved" and "unserved" customers truly need is not more monopoly-based paternalism, but rather a healthy dose of old fashioned competition. By contrast, if SBC is allowed to succeed in its cynical ploy, it is a sure bet that such competition for these consumers will never develop.

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<sup>36</sup> SBC Petition at 22.

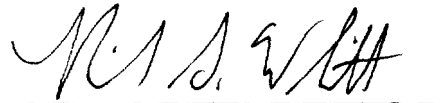
<sup>37</sup> See "Is ADSL Internet Access Superman or Clark Kent?," Investor's Business Daily, June 22, 1998, at A8.

### **III. CONCLUSION**

The Commission should promptly reject the SBC Petition as unsupported, unlawful, and contrary to the public interest.

Respectfully submitted,

WORLDCOM, INC.

A handwritten signature in black ink, appearing to read "C. R. Sloan", written over a horizontal line.

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June 24, 1998

**ATTACHMENT A**

COPY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Petition of the Association for Local )  
Telecommunications Services (ALTS) for a )  
Declaratory Ruling Establishing Conditions )  
Necessary to Promote Deployment of )  
Advanced Telecommunications Capability )  
Under Section 706 of the Telecommunications )  
Act of 1996 )

CC Docket No. 98-78

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COMMENTS OF WORLDCOM, INC.

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## SUMMARY

WorldCom strongly supports the ALTS Petition. The very real promise of the 1996 Act is mirrored in the pro-competitive, pro-consumer regulatory model proposed by ALTS, built on the encouragement of strong private investment by myriad companies in America's next generation telecommunications and data networks. The ALTS Petition offers a reasonable and welcome counterpoint to the hopelessly unbalanced and anticompetitive Section 706 petitions filed recently by four Regional Bell Operating Companies.

WorldCom wholeheartedly agrees with ALTS' position that the pro-competitive provisions of the 1996 Act -- Sections 251, 252, and 271 -- apply to the RBOCs' deployment of advanced telecommunications and data facilities, networks, and services. Those provisions do not distinguish between "basic" and "advanced" telecommunications and data services, nor does the legislative history support any disparate treatment of these services. Further, to encourage the accelerated deployment of advanced services, the Commission must rely on open and unbridled competition between multiple providers, not the further, deregulated extension of the incumbents' closed monopolies. In order for such competition to occur, ALTS correctly notes that CLECs need to be able to obtain the full measure of interconnection, collocation, UNEs, and resale if they are to realize their full potential as competitors in advanced services.

For purposes of this proceeding, WorldCom focuses on one particular "advanced telecommunications capability," Digital Subscriber Line, that the Commission should seek to encourage through its policies. In WorldCom's view, DSL technology holds the potential to singlehandedly transform the ordinary twisted-pair copper telephone line into the "Local Loop of the 21st Century." The ILECs cannot be allowed to take advantage of their sole control over that bottleneck facility by shutting out all competitors from any realistic opportunity to offer

DSL in the same way that the ILECs purportedly will. At minimum, as requested by the ALTS Petition, this means that DSL capability must be subject to the interconnection, collocation, unbundling, and resale requirements of Section 251(c) of the 1996 Act, so that CLECs can provide a rich panoply of broadband services on a competitive basis.

The 1996 Act gives CLECs multiple pathways for providing competitive telecommunications services to their end user customers in the local market. A competing carrier can, at its own option, (1) construct new local facilities interconnected with the ILEC's facilities (Sections 251(c)(2), 251(c)(3), and 251(c)(6)); (2) lease network elements at cost-based rates to provide competing service (Section 251(c)(3)); and/or (3) resell the ILEC's retail services at wholesale rates (Section 251(c)(4)). In the context of DSL service, these three statutory pathways translate into a CLEC's provision of: (1) DSL-capable loop, a conditioned ILEC loop (as a UNE), combined with the CLEC's own collocated DSL electronics; (2) DSL-equipped loop, a conditioned ILEC loop, the ILEC's DSL electronics, and (optionally) the ILEC's local switching and transport (as UNEs), with collocation at the CLEC's option; and/or (3) DSL service, the ILEC's retail DSL service on a resale basis, with no collocation required. These three competitive entry options are expressly available to CLECs under the 1996 Act, and should be enhanced, not foreclosed, by the Commission in any Section 706 proceedings.



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